

111TH CONGRESS  
2D SESSION

# H. R. 4530

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2010

Mr. POLIS of Colorado (for himself, Mr. ACKERMAN, Ms. BALDWIN, Ms. BERKLEY, Mr. BERMAN, Mr. BLUMENAUER, Mr. BRADY of Pennsylvania, Mrs. CAPPS, Mr. CAPUANO, Ms. CASTOR of Florida, Ms. CHU, Ms. CLARKE, Mr. COURTNEY, Mr. CROWLEY, Mr. CUMMINGS, Mrs. DAVIS of California, Ms. DEGETTE, Mr. DOYLE, Mr. ELLISON, Mr. ENGEL, Mr. FARR, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GARAMENDI, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HASTINGS of Florida, Ms. HIRONO, Mr. HOLT, Mr. HONDA, Mr. ISRAEL, Mr. JOHNSON of Georgia, Ms. LEE of California, Ms. ZOE LOFGREN of California, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mrs. MALONEY, Mr. MEEKS of New York, Mr. MORAN of Virginia, Mr. NADLER of New York, Mrs. NAPOLITANO, Ms. NORTON, Ms. PINGREE of Maine, Ms. ROSLEHTINEN, Mr. ROTHMAN of New Jersey, Ms. ROYBAL-ALLARD, Ms. LINDA T. SÁNCHEZ of California, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SPEIER, Mr. STARK, Mr. TOWNS, Mr. WELCH, Ms. WOOLSEY, Mr. WU, Mr. KUCINICH, and Ms. KILROY) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Student Non-  
3 discrimination Act of 2010”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) Public school students who are lesbian, gay,  
7 bisexual or transgender (LGBT), or are perceived to  
8 be LGBT, or who associate with LGBT people, have  
9 been and are subjected to pervasive discrimination,  
10 including harassment, bullying, intimidation and vio-  
11 lence, and have been deprived of equal educational  
12 opportunities, in schools in every part of our Nation.

13 (2) While discrimination, including harassment,  
14 bullying, intimidation and violence, of any kind is  
15 harmful to students and to our education system,  
16 actions that target students based on sexual orienta-  
17 tion or gender identity represent a distinct and espe-  
18 cially severe problem.

19 (3) Numerous social science studies dem-  
20 onstrate that discrimination, including harassment,  
21 bullying, intimidation and violence, at school has  
22 contributed to high rates of absenteeism, dropout,  
23 adverse health consequences, and academic under-  
24 achievement among LGBT youth.

25 (4) When left unchecked, discrimination, includ-  
26 ing harassment, bullying, intimidation and violence,

1 in schools based on sexual orientation or gender  
2 identity can lead, and has lead to, life-threatening  
3 violence and to suicide.

4 (5) Public school students enjoy a variety of  
5 constitutional rights, including rights to equal pro-  
6 tection, privacy, and free expression, which are in-  
7 fringed when school officials engage in discrimina-  
8 tory treatment or are indifferent to discrimination,  
9 including harassment, bullying, intimidation and vio-  
10 lence, on the basis of sexual orientation or gender  
11 identity.

12 (6) While Federal statutory protections ex-  
13 pressly address discrimination on the basis of race,  
14 color, sex, religion, disability, and national origin,  
15 Federal civil rights statutes do not expressly include  
16 “sexual orientation” or “gender identity”. As a re-  
17 sult, students and parents have often had limited  
18 legal recourse to redress for discrimination on the  
19 basis of sexual orientation or gender identity.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to ensure that all students have access to  
22 public education in a safe environment free from dis-  
23 crimination, including harassment, bullying, intimi-  
24 dation and violence, on the basis of sexual orienta-  
25 tion or gender identity;

1           (2) to provide a comprehensive Federal prohibi-  
2           tion of discrimination in public schools based on ac-  
3           tual or perceived sexual orientation or gender iden-  
4           tity;

5           (3) to provide meaningful and effective rem-  
6           edies for discrimination in public schools based on  
7           actual or perceived sexual orientation or gender  
8           identity; and

9           (4) to invoke congressional powers, including  
10          but not limited to the power to enforce the 14th  
11          Amendment to the Constitution and to provide for  
12          the general welfare pursuant to section 8 of article  
13          I of the Constitution and the power to enact all laws  
14          necessary and proper for the execution of the fore-  
15          going powers pursuant to section 8 of article I of the  
16          Constitution, in order to prohibit discrimination in  
17          public schools on the basis of sexual orientation or  
18          gender identity.

19 **SEC. 3. DEFINITIONS.**

20          For purposes of this Act:

21           (1) PROGRAM OR ACTIVITY.—The terms “pro-  
22           gram or activity” and “program” have same mean-  
23           ings given such terms as applied under section 606  
24           of the Civil Rights Act of 1964 (42 U.S.C. 2000d–

1       4a) to the operations of public entities under para-  
2       graph (2)(B) of such section.

3           (2) GENDER IDENTITY.—The term “gender  
4       identity” means the gender-related identity, appear-  
5       ance, or mannerisms or other gender-related charac-  
6       teristics of an individual, with or without regard to  
7       the individual’s designated sex at birth.

8           (3) HARASSMENT.—The term “harassment”  
9       means conduct that is sufficiently severe, persistent,  
10      or pervasive to limit a student’s ability to participate  
11      in or benefit from a public school education program  
12      or activity, or to create a hostile or abusive edu-  
13      cational environment at a public school, including  
14      acts of verbal, nonverbal, or physical aggression, in-  
15      timidation, or hostility, if such conduct is based  
16      on—

17                   (A) a student’s actual or perceived sexual  
18                   orientation or gender identity; or

19                   (B) the actual or perceived sexual orienta-  
20                   tion or gender identity of a person or persons  
21                   with whom a student associates or has associ-  
22                   ated.

23           (4) PUBLIC SCHOOLS.—The term “public  
24       schools” means public elementary and secondary  
25       schools, including local educational agencies, edu-

1 cational service agencies, and State educational  
2 agencies, as defined in section 9101 of the Elemen-  
3 tary and Secondary Education Act of 1965.

4 (5) SEXUAL ORIENTATION.—The term “sexual  
5 orientation” means homosexuality, heterosexuality,  
6 or bisexuality.

7 (6) STUDENT.—The term “student” means an  
8 individual who is enrolled in a public school or who,  
9 regardless of official enrollment status, attends  
10 classes or participates in a public school’s programs  
11 or educational activities.

12 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION; EXCEP-**  
13 **TIONS.**

14 (a) IN GENERAL.—No student shall, on the basis of  
15 actual or perceived sexual orientation or gender identity  
16 of such individual or of a person with whom the student  
17 associates or has associated, be excluded from participa-  
18 tion in, or be denied the benefits of, or be subjected to  
19 discrimination under any program or activity receiving  
20 Federal financial assistance.

21 (b) HARASSMENT.—For purposes of this Act, dis-  
22 crimination includes, but is not limited to, harassment of  
23 a student on the basis of actual or perceived sexual ori-  
24 entation or gender identity of such student or of a person  
25 with whom the student associates or has associated.

1 (c) RETALIATION PROHIBITED.—

2 (1) PROHIBITION.—No person shall be excluded  
3 from participation in, be denied the benefits of, or  
4 be subjected to discrimination, retaliation, or re-  
5 prisal under any program or activity receiving Fed-  
6 eral financial assistance based on his or her opposi-  
7 tion to conduct made unlawful by this Act.

8 (2) DEFINITION.—For purposes of this sub-  
9 section, “opposition to conduct made unlawful by  
10 this Act” includes, but is not limited to—

11 (A) opposition to conduct reasonably be-  
12 lieved to be made unlawful by this Act,

13 (B) any formal or informal report, whether  
14 oral or written, to any governmental entity, in-  
15 cluding public schools and employees thereof,  
16 regarding conduct made unlawful by this Act or  
17 reasonably believed to be made unlawful by this  
18 Act,

19 (C) participation in any investigation, pro-  
20 ceeding, or hearing related to conduct made un-  
21 lawful by this Act or reasonably believed to be  
22 made unlawful by this Act, and

23 (D) assistance or encouragement provided  
24 to any other person in the exercise or enjoy-

1           ment of any right granted or protected by this  
2           Act,  
3           if in the course of that expression, the person in-  
4           volved does not purposefully provide information  
5           known to be false to any public school or other gov-  
6           ernmental entity regarding a violation, or alleged  
7           violation, of this Act.

8   **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**  
9                           **PORT TO CONGRESSIONAL COMMITTEES.**

10          Each Federal department and agency which is em-  
11          powered to extend Federal financial assistance to any edu-  
12          cation program or activity, by way of grant, loan, or con-  
13          tract other than a contract of insurance or guaranty, is  
14          authorized and directed to effectuate the provisions of sec-  
15          tion 4 of this Act with respect to such program or activity  
16          by issuing rules, regulations, or orders of general applica-  
17          bility which shall be consistent with achievement of the  
18          objectives of the Act authorizing the financial assistance  
19          in connection with which the action is taken. No such rule,  
20          regulation, or order shall become effective unless and until  
21          approved by the President. Compliance with any require-  
22          ment adopted pursuant to this section may be effected—  
23                  (1) by the termination of or refusal to grant or  
24                  to continue assistance under such program or activ-  
25                  ity to any recipient as to whom there has been an



1       express finding on the record, after opportunity for  
2       hearing, of a failure to comply with such require-  
3       ment, but such termination or refusal shall be lim-  
4       ited to the particular political entity, or part thereof,  
5       or other recipient as to whom such a finding has  
6       been made, and shall be limited in its effect to the  
7       particular program, or part thereof, in which such  
8       noncompliance has been so found, or

9               (2) by any other means authorized by law,

10   except that no such action shall be taken until the depart-  
11   ment or agency concerned has advised the appropriate per-  
12   son or persons of the failure to comply with the require-  
13   ment and has determined that compliance cannot be se-  
14   cured by voluntary means. In the case of any action termi-  
15   nating, or refusing to grant or continue, assistance be-  
16   cause of failure to comply with a requirement imposed  
17   pursuant to this section, the head of the Federal depart-  
18   ment or agency shall file with the committees of the House  
19   and Senate having legislative jurisdiction over the pro-  
20   gram or activity involved a full written report of the cir-  
21   cumstances and the grounds for such action. No such ac-  
22   tion shall become effective until 30 days have elapsed after  
23   the filing of such report.

1   **SEC. 6. CAUSE OF ACTION.**

2           (a) CAUSE OF ACTION.—Subject to subsection (c) of  
3 this section, an aggrieved individual may assert a violation  
4 of this Act in a judicial proceeding. Aggrieved persons may  
5 be awarded all appropriate relief, including but not limited  
6 to equitable relief, compensatory damages, cost of the ac-  
7 tion, and remedial action.

8           (b) RULE OF CONSTRUCTION.—This section shall not  
9 be construed to preclude an aggrieved individual from ob-  
10 taining other remedies under any other provision of law  
11 or to require such individual to exhaust any administrative  
12 complaint process or notice-of-claim requirement before  
13 seeking redress under this section.

14          (c) STATUTE OF LIMITATIONS.—For actions brought  
15 pursuant to this section, the statute of limitations period  
16 shall be determined in accordance with section 1658(a) of  
17 title 28 of the United States Code. The tolling of any such  
18 limitations period shall be determined in accordance with  
19 the law governing actions under section 1979 of the Re-  
20 vised Statutes (42 U.S.C. 1983) in the forum State.

21   **SEC. 7. STATE IMMUNITY.**

22          (a) STATE IMMUNITY.—A State shall not be immune  
23 under the 11th Amendment to the Constitution of the  
24 United States from suit in Federal court for a violation  
25 of this Act.

1 (b) WAIVER.—A State’s receipt or use of Federal fi-  
2 nancial assistance for any program or activity of a State  
3 shall constitute a waiver of sovereign immunity, under the  
4 11th Amendment to the Constitution or otherwise, to a  
5 suit brought by an aggrieved individual for a violation of  
6 section 4 of this Act.

7 (c) REMEDIES.—In a suit against a State for a viola-  
8 tion of this Act, remedies (including remedies both at law  
9 and in equity) are available for such a violation to the  
10 same extent as such remedies are available for such a vio-  
11 lation in the suit against any public or private entity other  
12 than a State.

13 **SEC. 8. ATTORNEY’S FEES.**

14 Section 722(b) of the Revised Statutes (42 U.S.C.  
15 1988(b)) is amended by inserting “the Student Non-  
16 discrimination Act of 2010,” after “Religious Land Use  
17 and Institutionalized Persons Act of 2000,”.

18 **SEC. 9. EFFECT ON OTHER LAWS.**

19 (a) FEDERAL AND STATE NONDISCRIMINATION  
20 LAWS.—Nothing in this Act shall be construed to pre-  
21 empt, invalidate, or limit rights, remedies, procedures, or  
22 legal standards available to victims of discrimination or  
23 retaliation under any other Federal law or law of a State  
24 or political subdivision of a State, including title VI of the  
25 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title

1 IX of the Education Amendments of 1972 (20 U.S.C.  
2 1681 et seq.), section 504 of the Rehabilitation Act of  
3 1973 (29 U.S.C. 794), the Americans with Disabilities Act  
4 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the  
5 Revised Statutes (42 U.S.C. 1983). The obligations im-  
6 posed by this Act are in addition to those imposed by title  
7 IX of the Education Amendments of 1972 (20 U.S.C.  
8 1681 et seq.), title VI of the Civil Rights Act of 1964 (42  
9 U.S.C. 2000d et seq.), and the Americans with Disabilities  
10 Act of 1990 (42 U.S.C. 12101 et seq.).

11 (b) FREE SPEECH AND EXPRESSION LAWS AND RE-  
12 LIGIOUS STUDENT GROUPS.—Nothing in this Act shall be  
13 construed to alter legal standards regarding, or affect the  
14 rights available to individuals or groups under, other Fed-  
15 eral laws that establish protections for freedom of speech  
16 and expression, such as legal standards and rights avail-  
17 able to religious and other student groups under the 1st  
18 Amendment to the Constitution and the Equal Access Act  
19 (20 U.S.C. 4071 et seq.).

20 **SEC. 10. SEVERABILITY.**

21 If any provision of this Act, or any application of such  
22 provision to any person or circumstance, is held to be un-  
23 constitutional, the remainder of this Act, and the applica-  
24 tion of the provision to any other person or circumstance  
25 shall not be affected.

1 **SEC. 11. EFFECTIVE DATE.**

2       This Act shall take effect 60 days after the date of  
3 the enactment of this Act and shall not apply to conduct  
4 occurring before the effective date of this Act.

